by the prisoner to the officer who had arrested him, ten or twelve minutes after the assault, were held inadmissible as not being so closely connected with the event as to be free from all suspicion of after-thought or device. *Hall* v. *State*, 48 Ga. 607 (1873); *People* v. *Dad* (Cal.), 196 Pac. 506 (1921).

A self-serving declaration by the accused shortly after the act is not admissible unless a part of the *res gestæ*. *James* v. *State*, 12 Ala. App. 16, 67 So. 773 (1914); *State* v. *McKinney* (W. Va.), 106 S. E. 894 (1921). The same rule applies as to declarations made before the act. *Dean* v. *State*, 78 Fla. 575, 83 So. 504 (1919).

NEGLIGENCE—ACT IN EMERGENCY JUDGED BY CIRCUMSTANCES.—Plaintiff, a fireman on the first of two engines of defendant's train, became wedged between the locomotive and tender, while the train was in motion. From the construction of the cab, the engineer when in his seat could not see the fireman, when the latter occupied his normal position. The first knowledge the engineer had that the plaintiff was not in his usual place and of his predicament, came from his screams. The engineer immediately left his place and endeavored to extricate the fireman, but being unable to do so returned to his seat and gave the signal to stop. The time consumed by his actions before the stop signal was given occupied a minute and a half. Plaintiff was severely injured and brought suit against the defendant alleging that the latter's engineer should have given the stop signal immediately upon hearing plaintiff's screams and his failure to do so amounted to negligence warranting a recovery. *Held*, judgment for defendant. *Louisville & N. R. Co.* v. *Wright* (Ky.), 235 S. W. 1 (1921).

Where an employee of a railroad company is confronted with a sudden emergency, the failure on his part to exercise the best judgment and to see and follow the course which, upon reflection, seems wiser, does not establish negligence upon his part which renders his employer liable. *Ackerman* v. *Union Traction Co.*, 205 Pa. 477, 55 Atl. 16 (1903); *Barnes* v. *Danville Street R. Co.*, 235 Ill. 566, 85 N. E. 921, 128 Am. St. Rep. 237 (1908); *Gumz* v. *Chicago, etc., Ry. Co.*, 52 Wis. 672, 10 N. W. 11 (1881); *Bishop* v. *Belle City St. Ry. Co.*, 92 Wis. 139, 65 N. W. 733 (1896); *Bittner* v. *Crosstown, etc., Ry. Co.*, 153 N. Y. 76, 46 N. E. 1044, 60 Am. St. Rep. 588 (1897). But while one acting in a sudden crisis is not required to exercise that deliberate judgment which time for reflection affords, he is required to use reasonable care *in view of all the circumstances*, the emergency being taken into consideration as a circumstance. *Tozier* v. *Haverhill, etc., Ry. Co.*, 187 Mass. 179, 72 N. E. 953 (1905); *Lemay* v. *Springfield St. Ry. Co.*, 210 Mass. 63, 96 N. E. 79, 37 L. R. A. (N. S.) 43 (1911). So the employer of one, doing an act in a sudden crisis, the injurious result of which was evident to the casual observer, was held liable for such negligence. *American Car, etc., Co.* v. *Inzer* (Ind.), 86 N. E. 444 (1908). There is slight authority for the principle that there is no predicate for the application of the *in extremis* rule in the absence of personal peril to the party seeking to have his conduct measured by reference to it. *Bessemer Land, etc., Co.* v. *Campbell*, 121 Ala. 50, 25 So. 793, 77 Am. St. Rep. 17 and note (1899). But the weight of authority is otherwise and the employee need not himself be in danger. *Hughes* v. *Oregon Imp. Co.*, 20 Wash. 294, 55 Pac. 119 (1898); *Floyd* v. *Philadelphia R. Co.*, 162 Pa. St. 29, 29 Atl. 396 (1894); *Ackerman* v. *Union Traction Co.*, *supra*; *Sekerek* v. *Jutte*, 153 Pa. St. 117, 25 Atl. 994 (1893).

The question involved in the instant case has arisen in Virginia and it was held that the defendant's employee could not be required in an emergency to adopt the wisest possible course to avert an accident, but that due care under the circumstances was the requirement. *Pond* v. *Norfolk & W. R. Co.*, 111 Va. 735, 69 S. E. 949 (1911).

PRINCIPAL AND AGENT—CONTRACT FOR RIGHT TO SELL DEFENDANT'S TRUCKS IN FRANCE HELD NOT TO INCLUDE TRUCKS SOLD TO THE UNITED STATES FOR USE IN FRANCE.—The plaintiff contracted with the defendant maker of automobiles and trucks for the "sole right" to sell such products to the governments of France, Serbia, and Belgium, as well as within their territory, for a commission, which should be computed on all sales "in or for" the territory named. The defendant corporation sold trucks to the government of the United States which were delivered in the United States, and some of which were used in France during the World War. The plaintiff claimed commissions on such of the trucks as were used in France, but the defendant contended that the terms "in or for" could not be construed to mean "in or for use in". *Held*, the plaintiff is not entitled to commissions. *Godsol* v. *Nash Motors Co.*, 115 Atl. 604 (1921).

Where there is a sale of goods by the principal outside of the agent's territory, but for delivery in his territory, and where there is evidence of a construction of the contract by the parties, and of an established trade usage, entitling the agent to commissions on such sales, the agent is entitled to recover commissions. *Caro* v. *Mattei*, 39 Cal. App. 253, 178 Pac. 537 (1919). "Where there is an exclusive agency and the principal violates the contract by making sales directly and knowingly within the exclusive territory he is clearly liable". *Marshall* v. *Canadian Cordage and Mfg. Co.*, 160 Ill. App. 114 (1911); *Hodson-Feenaughty Co.* v. *Coast Culvert & Flume Co.*, 91 Ore. 630, 178 Pac. 382 (1919).

If the contract of sale is made outside of the agent's territory to a resident of that territory, and there is evidence of a trade usage entitling the agent to commissions on such sales, he may recover commissions. *Garfield* v. *Peerless Motor Car Co.*, 189 Mass. 395, 75 N. E. 695 (1905); *Thompson-Houston Electric Co.* v. *Berg*, 10 Tex. Civ. App. 200, 30 S. W. 454 (1895). But in a later Texas case, *Nickels* v. *Prewitt Auto Co.* (Tex. Civ. App.), 149 S. W. 1094 (1912), in the absence of trade usage, the court held that where a contract gave defendant the exclusive right to sell certain automobiles and supplies in a fixed locality, plaintiff did not violate the agreement by selling to a resident of that locality at its own place of business, which was outside of the boundaries fixed by the contract.

In the instant case the trucks in question were not sold for delivery in the agent's territory, or to a resident of the agent's territory, or to or for the government of either of the countries named in the contract, but were sold and delivered in this country to the government of the United States. They were sold to the government of the United States for the use of its own army, or for the use of the War Department, and the fact that some of the trucks were used by the army in France, and later turned over to the French government, should not entitle the agent to commissions.